

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



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STARK TRUSS COMPANY, INC.,

Plaintiff,

v.

22-CV-979 (JLS) (JJM)

AFFINITY ELMWOOD GATEWAY  
PROPERTIES, LLC,  
MERCHANTS BONDING COMPANY  
(MUTUAL),

Defendants.

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**DECISION AND ORDER**

Plaintiff Stark Truss Company (“Stark Truss”) commenced this action on December 16, 2022, alleging claims against Defendants Affinity Elmwood Gateway Properties, LLC (“Affinity”), RP Oak Hill Building Company, Inc., and Merchants Bonding Company (Mutual) (“Merchants”) related to a construction project in the City of Buffalo. *See* Dkt. 1.<sup>1</sup> As relevant here, Affinity filed an answer that also alleged a counterclaim for breach of contract, *see* Dkt. 29 at 13-14, and Stark Truss moved for partial summary judgment (Dkt. 80) to dismiss that counterclaim. *See* Dkt. 81, 82.

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<sup>1</sup> The case was referred to Magistrate Judge Jeremiah J. McCarthy for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). *See* Dkt. 33. This Court previously issued a decision (Dkt. 54) that accepted and adopted Judge McCarthy’s Report and Recommendation (“R&R”) (Dkt. 53) to grant RP Oak Hill’s motion to dismiss the complaint as against it. RP Oak Hill was then terminated as a defendant.

Defendants Affinity and Merchants opposed the motion, *see* Dkts. 86, 87, 88, 89, 90, and Stark Truss replied. Dkt. 91.

Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that the motion for partial summary judgment be granted in part and denied in part. Dkt. 92.

Defendants timely objected to the R&R to the extent that it recommended dismissal of portions of Affinity’s counterclaim. Dkt. 93. Stark Truss responded, *see* Dkt. 95, and Defendants replied. Dkt. 96.

This Court held a status conference on May 20, 2025, to address the parties’ submissions to the R&R and to discuss possible settlement options. Dkt. 100. The parties proceeded to a settlement conference with Judge McCarthy on June 11, 2025, and the case was not settled. Dkt. 103.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

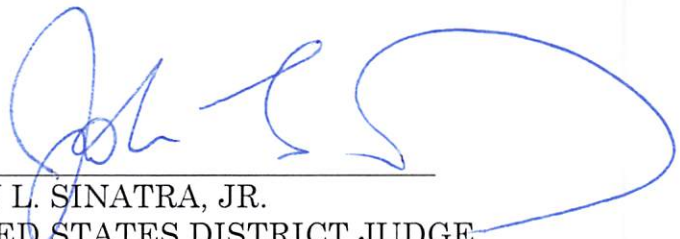
The Court carefully reviewed Judge McCarthy’s R&R, the parties’ objections and related submissions, and the relevant record. Based on that review, the Court accepts the R&R.

For the reasons stated above and in the R&R, the Court GRANTS the motion for partial summary judgment in part and DENIES it in part, as set forth specifically in Judge McCarthy's R&R. *See* Dkt. 92 at 26-27.

The parties shall appear for **a status conference** before this Court **on June 25, 2025 at 1:30 p.m.** to address the next steps in this case.

SO ORDERED.

Dated: June 18, 2025  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE